

REMARKS

This amendment is in response to the Final Office Action mailed July 31, 2007. Claims 64-66 and 88-90 have been canceled without prejudice. Claims 43-45, 50, 51, 59, 61-63, 67-75, 82-87, and 91-94 are presently pending. No new matter has been added.

In a telephone conversation on September 5, 2007, the Examiner indicated that the standard asserted by the Examiner regarding the recapture rejection was incorrect. The Examiner conceded that the requisite elements from the original claims included in the new claims need not be verbatim in order to avoid recapture.

Because the Examiner has conceded that the standard applied in the recapture rejection is incorrect, the Applicant respectfully requests that the finality of the present Office Action be withdrawn. Finality is premature because the basis for maintaining the recapture rejection is incorrect.

Defective Oath/Declaration

Claims 43-45, 50-51, 59, 61, 63, 67-69, 70-75, and 82-87 were rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. The Applicant is submitting herewith a Supplemental Reissue Application Declaration by the Inventor. The Applicant respectfully requests withdrawal of this rejection of the claims.

Specification

The disclosure was objected to for not including a notice that more than one reissue application is filed. The specification of the present patent application has been amended to provide notice of the other two pending reissue applications. The Applicant requests withdrawal of this objection to the disclosure.

§112 Rejection

Claims 64-66 and 88-90 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant

regards as the invention. The Applicant has canceled claims 64-66 and 88-90. Accordingly, the Applicant requests withdrawal of this rejection.

Recapture

Claims 43-45, 50, 51, 58, 59, 61-75, and 82-94 were rejected under 35 U.S.C. 251 as being an improper recapture of broadened claimed subject matter surrendered in the application for the patent upon which the present reissue is based. The Applicant requests withdrawal of this rejection.

As indicated in the response filed March 29, 2006, the Applicant has incorporated elements from patent application claims 40 and 45. During the original prosecution, claims 40 and 45 were indicated as being allowable if rewritten in independent form. Claims 40 and 45 were then rewritten as patent application claims 74 and 75 and issued as patent claims 30 and 35.

Original patent application claim 40 reads as follows:

40. The mounting device according to Claim 38 wherein the base takes the form of a second coupling member having a substantially smooth part spherical outer peripheral surface thereon, the second coupling member is also compressible radially thereof at the outer peripheral surface thereof, and the mounting device further comprises means forming a pair of operatively opposing second sockets in the faces of the respective arm sections which have substantially smooth part spherical surfaces at the inner peripheries thereof that are rotatably engageable with the second coupling member at the outer peripheral surface thereof in the respective positions of the bifurcated arm assembly lying between the third and first positions thereof inclusive, and which progressively seize the second coupling member by compressing and deforming the outer peripheral surface thereof to interlock the bifurcated arm assembly with the second coupling member when the pair of arm sections is reciprocated in relation to one another in the direction of the second position of the bifurcated arm assembly from the first position thereof.

Original patent application claim 45 reads as follows:

45. The mounting device according to Claim 38 wherein the first coupling member having a reduced diameter neck at a side thereof opposed to the part spherical outer peripheral surface thereof, and the first sockets having rims formed thereabout in the faces of the respective arm sections, and indentations in the respective rims thereof at the plane of the

reissue claims. The Examiner conceded that a verbatim recitation was not necessary in a telephone interview on September 5, 2007.

M.P.E.P. §1412.02 discusses recapture. In particular, M.P.E.P. §1412.02(I)(C)(2)(d) is directed to situation presented by the present claims which include, in broadened form, the elements used to overcome an art rejection. This section of the M.P.E.P. makes clear the standard related to “Reissue Claims Broader in Scope in Area Directed to Amendment/Argument Made to Overcome Art Rejection in Original Prosecution: but Reissue Claims Retain, in Broadened Form, the Limitation(s) Argued/Added to Overcome Art Rejection in Original Prosecution:”

Assume the combination AB was originally claimed in the application, and was amended in reply to an art rejection to add element C and thus provide the combination ABC (after which the patent issued). A reissue application is then filed, and the reissue application claims are directed to the combination ABC_{broadened}. The ABC_{broadened} claims are narrowed in scope when compared with the canceled claim subject matter AB, because of the addition of C_{broadened}. Thus, the claims retain, in broadened form, the limitation argued/added to overcome art rejection in original prosecution. There is no recapture, since ABC_{broadened} is narrower than canceled claim subject matter AB in an area related to the surrender. This is so, because it was element C that was added in the application to overcome the art. (§1412.02(I)(C)(2)(d), emphasis in original)

As indicated above, present independent claims 43, 50, 59, 61, 63, 70, 91, and 94 include the elements of original claims 40 or 45 (which were rewritten in independent form and issued as claims 30 and 35) in broadened form. These elements of claims 40 and 45 were used to overcome a prior art rejection. According to the proper standard, as described above, there is no recapture because the present claims include a broadened form of the elements of claims 40 or 45 which elements were used to overcome the prior art rejections. Accordingly, the Applicant submits that the present claims are allowable. The Applicant respectfully requests withdrawal of this rejection of claims 43-45, 50, 51, 58, 59, 61, 63 and 67-69.

Double Patenting


Claims 43-45, 50, 51, 59, 601-75, and 82-94 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-37, 39, 42, 47, 49, 52, 55-57, 60, 62-68, 75-85 of U.S. Patent Application No. 10/300,951. The Applicant has included an

executed terminal disclaimer. Accordingly, the Applicant respectfully requests withdrawal of this rejection of the claims.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. If the Examiner has any questions or concerns, the Applicant encourages the Examiner to contact the Applicant's representative, Bruce Black, by telephone to discuss the matter.

Dated: October 5, 2007

Respectfully submitted,

By 
Bruce E. Black

Registration No.: 41,622
DARBY & DARBY P.C.
P.O. Box 770
Church Street Station
New York, New York 10008-0770
(206) 262-8900
(212) 527-7701 (Fax)
Attorneys/Agents For Applicant